

REMARKS

Claims 1-38 are pending in the application.

Objections to Specification

The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. With respect to the claimed feature of an “instant messaging module,” Applicant respectfully directs the Examiner’s attention to the Specification, p.12, ll. 15-16 (stating a “centralized messenger service may be Apple Computer Inc.’s iChat™, America Online’s AIM™, an instant messaging module or the like.”). Further, the term “instant messaging module” was found in the originally filed claims, which as the Examiner is well aware, is part of the originally filed specification. Additionally, throughout the Specification, references to instant messaging applications can be found. Therefore, there exists adequate support for the term “instant messaging module” in the specification of the present application.

With respect to the claimed feature of computer-readable medium, Applicant respectfully directs the Examiner’s attention to the language of claim 26 itself: “a computer-readable medium having computer program instructions and data embodied thereon for sharing identity-based activity with at least one peer.” Applicant submits that a computer readable medium, by itself, shows a tangible thing. Likewise, a software program itself could not have instructions or data embodied thereon. This language clearly indicates a tangible, physical embodiment.

Applicant also respectfully directs the Examiner’s attention to the Specification, Fig. 1, which discloses two servers (130 and 140). A person of ordinary skill in the art would easily recognize a server as a type of computer with RAM, processor(s), disk storage, user inputs, CD-ROMs/floppy diskette drives, and the like. Thus, those skilled in the art would find the support for “computer readable medium” in the specification. Additionally, Applicant respectfully

directs the Examiner's attention to the Specification, p.15, ll. 9-15, for textual support as a non-limiting, illustrative example. This passage states:

The content repository 240 stores data files that are activated by the application module 230. The content repository 240 may be a hard disk, flash memory, random access memory, or any device capable of non-volatile or volatile storage of data files. The data files contain data in any useful format, such as mpg, .wma, .omg, .gif, .mp3, .doc, .txt, .pdf, or any format capable of execution by the application module 230. In one embodiment, the content repository 240 is networked to the sender peer 110 such as a personal digital assistant with data files connected to the peer via the Bluetooth wireless communications protocol.

See Specification, p.15, ll. 9-15. These exemplary references to storing data would make clear to those skilled in the art the nature of a "computer readable medium" within the context of the present invention. As such, the Specification clearly provides support for the claimed features. Additionally, the feature of a computer-readable medium was included in the specification as an originally filed claim. Accordingly, for numerous reasons, there exists proper support in the specification for the term computer readable medium.

Therefore, Applicant respectfully requests the Examiner's rejection of the Specification as failing to provide sufficient antecedent basis for the claims be withdrawn.

Claim Rejections – 35 U.S.C §101

The Examiner rejected claims 1-15 and 38 under 35 U.S.C. §101 as being directed to non-statutory subject matter. Applicant respectfully traverses this rejection.

Applicant respectfully disagrees that the claims are directed toward software as claimed by the Examiner. *See Office Action, p.3.* Applicant asserts that a claim for an apparatus which in turn uses a daemon or module is allowable subject matter under 35 U.S.C. §101. Applicant is not seeking to patent a computer program or a module as alleged by the Examiner, rather with regard to claims 1-15 and 38, Applicant seeks to claim an apparatus with certain features that

uses a daemon/module to perform functions. Additionally, daemons, as is known in the art, may be implemented as hardware, software, or a combination thereof, and are not limited to any one format as suggested by the Examiner.

Moreover, the claimed features of a daemon and a module are used to provide a useful/tangible result. For example, the daemon is used to detect and store identity-based activity. Here the storing of identity based activity clearly meets the requirement of a useful/tangible result. Similarly, an instant messaging module that sends an indication of identity-based activity to at least one peer provides a useful/tangible result. The claims refer to an apparatus that comprises these useful modules to perform specific processes, resulting in a novel, useful and non-obvious, tangible apparatus. Accordingly, claims 1-15 and 38 are in full compliance with the requirements of 35 U.S.C. §101.

Therefore, Applicant respectfully requests the Examiner's rejection under 35 U.S.C. §101 be withdrawn.

Claim Rejections – 35 U.S.C 103

Claims 1-38 are rejected under 35 U.S.C. §103(a) as being unpatentable over *Briggs* (US Pat. 7,080,139) in view of *Liversidge* (US Pub. 2002/0076025). Applicant respectfully traverses this rejection.

For ease of discussion, claim 1 is discussed first. Claim 1, directed to an apparatus for sharing identity-based activity with at least one peer, calls for (1) a content daemon to detect and store identity-based activity, and (2) an instant messaging module, communicatively coupled to the content daemon, to send an indication of identity-based activity to at least one peer, the identity-based activity related to a user logged-in to the instant messaging module.

Applicant respectfully asserts that *Briggs*, *Liversidge*, and/or their combination do not teach or disclose all of the elements of claim 1 of the present invention. In order to establish a *prima facie* case of obviousness, the Examiner must consider the following factors: 1) there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine the teachings; 2) there must be a reasonable expectation of success; and 3) the prior art reference(s) must teach or suggest all the claim limitations. MPEP § 2143 (2005) (citing *In re Vaeck*, 947 F.2d 488, 20 U.S.P.Q.2d 1438 (Fed. Cir. 1991). In making an obviousness rejection, it is necessary for the Examiner to identify the reason why a person of ordinary skill in the art would have combined the prior art references in the manner set forth in the claims. *KSR Int'l Co. v. Teleflex, Inc.*, at 14, No. 04-1350 (U.S. 2007). Applicant respectfully submits that the Examiner has not met this burden. If, as illustrated below, *Briggs* and *Liversidge* are incompatible, then consequently those skilled in art would not combine them and make all of the elements of claims of the present invention obvious. Accordingly, Applicant respectfully submits that a *prima facie* case of obviousness has not been established in rejecting claims 1-38.

For example, with respect to the claimed feature of an instant messaging module, communicatively coupled to the content daemon, to send an indication of identity-based activity to at least one peer, the identity-based activity related to a user logged-in to the instant messaging module, the Examiner has admitted that *Briggs* does not teach a instant message module (see Final Office Action, p. 5). The Examiner suggests, however, that this claimed feature is taught by *Liversidge*. *See id.* Specifically, the Examiner relies on ¶[0073] which states “an instant messaging server 84 which interacts with the collaboration manager 76 to provide specialized services with respect to the management and control of instant messaging sessions.” Even if this

is true, the *Liversidge* reference is silent regarding identity-based activities, much less sending indications of such activities to at least one peer. The Examiner has attempted to combine a reference that teaches the use of an instant messaging application in a “Virtual Team Environment” (VTE) in order to account for the claimed feature of an instant messaging module, communicatively coupled to the content daemon, to send an indication of identity-based activity to at least one peer, the identity-based activity related to a user logged-in to the instant messaging module. Clearly, as *Liversidge* is silent regarding this feature, the combination of this reference with the teachings of *Briggs* is not proper. Essentially, the Examiner has used improper, pure hindsight reasoning to incorporate only the teaching of an instant messaging module into a claim feature that also requires the instant messaging module to be communicatively coupled to the content daemon, to send an indication of identity-based activity to at least one peer, the identity-based activity related to a user logged-in to the instant messaging module. In other words, adding the disclosure of *Liversidge* does not make up for the deficit of *Briggs*.

Similarly, the mention of “provid[ing] specialized services” in *Liversidge*, ¶[0073], fails to teach the claimed feature of an instant messaging module, communicatively coupled to the content daemon, to send an indication of identity-based activity to at least one peer, the identity-based activity related to a user logged-in to the instant messaging module. *Liversidge* discloses that functionality within the VTE may be altered or removed depending on the capabilities of the participants’ communications devices (*e.g.*, if a communications unit cannot support a graphical user interface, a text display manager may be used, or if a POTS telephone handset is used, the GUI manager, transport manager, collaboration client, and database clients may be omitted). There is no basis for reading the claimed feature of instant messaging module sending an indication of identity-based activity to at least one peer, the identity-based activity related to a

user logged-in to the instant messaging module into the subject matter of *Liversidge*, associated with “provid[ing] specialized services.”

Thus the Examiner’s rejection fails because *Briggs* and *Liversidge*, alone or in combination, fail to teach at least one of the claimed features. Accordingly, Applicant respectfully submits that claims 1-38 are allowable over the cited art.

Other pending claims are allowable for additional features recited therein. For instance, claim 4, which depends from claim 1, teaches sharing identity-based activity comprising instances of active content by a user logged-in to the instant messaging module. Active content includes files that a user is **currently accessing**, such as music files the user is currently listening to, movies the user is currently watching, or the like. *See Application*, p. 2, ll. 14-16. Sharing active content allows the user to communicate current activity in real-time. The *Briggs* reference at least does not teach the claimed feature of sending an indication of identity-based activity, wherein identity-based activity comprises instances of active content by a user logged-in to the instant messaging module. The whole idea behind the subject matter described in *Briggs* is that you can rate and comment on web content before you share with your “buddies.” *See Briggs*, col. 2, ll. 51-55 (stating “[A] user could visit a web site, listen to or watch content, rate a site or content, assign an emoticon or quick comment to a site or content, send or bookmark a site or content or download data; a VUD entry could result.” [emphasis added]). It can only be concluded that *Briggs* does not teach the sending of an indication of active content.

In the Office Action, the Examiner argues that the claimed feature of “sending active content” is taught by *Briggs* in Col. 7, ll. 42-44. *See Office Action*, p. 4. Applicant respectfully disagrees. The cited passage from *Briggs* describes sending previously stored information to another user. In particular, *Briggs* teaches sending a *stored* item, item link, or item information

to a “buddy” who has enrolled to share data. *See Briggs*, col. 7, ll. 42-44; col.19, ll. 5-6; col. 18, ll. 38-57. For example, a user in *Briggs* may choose to send a “buddy” an item from a list of *previously visited* websites. *See Briggs*, Fig. 9. As such, *Briggs* discloses the sharing of *past* activities and experiences with other “buddies.” In contrast, Claim 4 calls for sending an indication of identity-based activity, wherein identity-based activity comprise instances of active content by a user logged-in to the instant messaging module.

Furthermore, the Examiner has admitted that *Briggs* does not teach an instant messaging module. *See Specification*, p.5. Thus, *Briggs* cannot teach the claimed feature of identity-based activity comprises instances of active content by a user logged-in to the instant messaging module. As stated above with respect to claim 1, *Liversidge* does not teach any instances of active or identity-based content. For at least these reasons, claim 4 is allowable. Accordingly, claims 5, 17-18 and 29-30 are also allowable for the same reasons claim 4 is allowable.

Claim 8 is also allowable for features recited therein. Claim 8, which depends from claim 1, calls for the content daemon to detect and store identity-based activity after logging-in the user to the instant messaging module, and wherein the instant messaging module sends an update to the identity-based activity. As described in the instant Application, by using an instant messaging module for sharing, users can share real-time content and files with other users, not just “static files” stored on the computer. *See Application*, ¶[0006] & ¶[0027]. *Briggs* discloses a log-in screen from which a user may log-in or create a new account. Specifically, *Briggs* shows a log-in screen for the “fatbubble®” program, not an instant messaging module as taught in claim 8. *See Briggs*, Fig. 2. In fact, *Briggs* teaches that the interface used to send content to “buddies” is an administrative tool used to select “buddies” options and send files, it is not an instant messaging module used for instant messaging and sharing content post log-in.

Furthermore, the Examiner has admitted that *Briggs* does not teach an instant messaging module. See Specification, p.5. In contrast, claim 8 teaches the feature of content daemon to detect and store identity-based activity after logging-in the user to the instant messaging module.

With respect to the claimed feature of sends an update to the identity-based activity, the Examiner cites *Briggs*, col. 7, ll.64-65, (even though this reference does not teach an instant messaging module that performs the sending feature) as teaching “columns provided...include a tick box 852, a buddy name 853, and one or more instant messaging contact links 854.” See Final Office Action, p.8. Applicant respectfully asserts that the cited passage does not teach identity based activity, as understood from a reading of the claims and the specification. As a non-limiting, illustrative example, identity based activity may include web auctions, other web-based transactions, and the like. See Specification, p.2, ll.9-19. As noted above, *Liversidge* also does not disclose the identity based activity described above. The simple disclosure of messaging in *Liversidge* does not provide the subject matter missing from *Briggs*. In contrast to the prior art, claim 8 teaches sending an update to the identity-based activity. For at least this reason, claim 8 is allowable. For similar reasons, claims 9, 11, 23, 29 and 35 are also allowable.

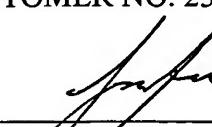
Applicant respectfully asserts that in light of the amendments and arguments provided throughout the prosecution of the present application, all claims of the present application are now allowable and, therefore, request that a Notice of Allowance be issued. Reconsideration of the present application is respectfully requested.

If for any reason the Examiner finds the application other than in condition for allowance, the Examiner is respectfully requested to call the undersigned attorney at the Houston, Texas telephone number (713) 934-4064 to discuss the steps necessary for placing the application in condition for allowance.

Respectfully submitted,

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